



Request for Information – Response  
September 25, 2020

TO: Texas House Human Services Committee  
Courtney DeBower, Assistant Committee Clerk  
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FROM: Lee Johnson, MPA  
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**RE: Request for Information (RFI) Response – Due September 25<sup>th</sup>**

*Impacts of COVID-19 on Long-Term Care Facilities: Consider the following issues in light of the COVID-19 pandemic:*

- 1) Review the state's response to the pandemic, specifically as it relates to emergency regulations that prohibited visitation of residents of long-term care facilities by family members. Examine the physical and mental health impacts of the visitation policy on long-term care residents.*
- 2) Review emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.*

Texas Council of Community Centers represents the 39 Community Mental Health and Intellectual Disability Centers (Centers) throughout Texas statutorily authorized to coordinate, provide, and manage community-based services, as alternatives for institutional care, for persons with intellectual and developmental disabilities, serious mental illness, and substance addictions.

Created by the Texas Mental Health and Mental Retardation Act – now known as the Texas Mental Health and Intellectual Disabilities Act – of 1965, Community Centers are authorized to conduct certain functions for Texans with mental illness and IDD. For individuals with IDD, Community Centers function as the Local IDD Authority for their respective local services areas. Many Community Centers serve as public providers of IDD service providers for the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and/or Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) programs.

**1) Review the state's response to the pandemic, specifically as it relates to emergency regulations that prohibited visitation of residents of long-term care facilities by family members. Examine the physical and mental health impacts of the visitation policy on long-term care residents.**

In accordance with the Texas Administrative Code, providers of long-term care services are responsible for the health and safety of the individuals receiving services, many of whom live in congregate care settings. Individuals living in these settings are especially susceptible to infectious diseases that are highly contagious, making the COVID-19 infection more concerning since not all infected persons show physical symptoms. Given this

heightened threat, expanding visitation to allow limited persons to visit individuals receiving LTC services should be conducted slowly and intentionally.

Soon after Governor Abbott declared a State of Disaster due to the COVID-19 pandemic and Commissioner Hellerstedt issued the Public Health Disaster Declaration for Texas in March 2020, HHSC released guidance prohibiting non-essential visits to long-term care facilities, including HCS residential settings (i.e. 3- and 4- person group homes and host home/companion care (HH/CC) settings). The prohibition of non-essential visitations to long-term care settings was important to protect the health and safety of residents, as it reduced resident exposure to the infection.

Understanding the benefit of and desire for visitations, providers require emergency rules that clearly communicate expectations while considering the challenges long-term care providers face during a pandemic. HHSC published emergency rules to expand visitation in long-term care settings in late August. HCS and Community ICF/IID providers and the agency continue to work through conflicting provisions to ensure individuals in services and families are able to connect, while at the same time providers are able to meet regulatory expectations for keeping people safe and to minimize the spread of COVID-19.

Since March, IDD providers have experienced increased costs due to COVID-19 (e.g. obtaining PPE, increased overtime hours worked, and increased sick time taken if a worker tests positive or is exposed to the infection). Despite the myriad of challenges, HCS and community-based ICF/IID providers have adapted to the changing environment while continuing to provide vital services to persons with IDD. In particular, providers supporting individuals with IDD (i.e. HCS and community-based ICF/IID providers), have long experienced challenges with workforce retention and providing vital community-based services with carefully structured budgets before the pandemic response was implemented.

On September 24, 2020, the long-term care rules were updated to allow providers to choose whether they will provide expanded visitation and implement the rules accordingly. Of concern still is the difficulty for community-based IDD providers to access COVID-19 tests. Providing priority status to these providers similar to the priority status provided to Nursing Facility staff would help providers implement expanded visitation. By helping LTC providers be more confident to expand visitations, the residents receiving supports in LTC settings will be able to see and hug their loved ones sooner.

## **2) Review emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.**

### *Recommendations relating to Local IDD Authorities*

Local IDD Authorities conduct Targeted Case Management and PASRR functions, which require face-to-face contact with persons receiving services. Due to the pandemic, staff are allowed to conduct these roles and functions via phone or videoconferencing means. Without knowing when a reliable preventative measure will be available to protect against COVID-19, continuing to provide flexibility to this requirement is particularly important to ensure the functions continue while keeping the individuals receiving services and Local IDD Authority coordinators safe.

### *Recommendations relating to providers of IDD Services (HCS and community based ICF/IID program providers)*

Without knowing when a reliable preventative measure will be available to protect against COVID-19, Texas Council recommends all temporary policy changes and flexibilities relating to services for persons with IDD be allowed on a longer-term basis. s. This includes flexibilities that allow certain services to be provided in a person's

home, such as Day Habilitation and CFC PAS/HAB. Other flexibilities relating to automatically renewing Individual Plans of Care (IPC), extending Determinations of Intellectual Disability (DID) requiring reassessment for individuals receiving Community First Choice (CFC), and not requiring a doctor's signature on the Intellectual Disability and Related Condition (ID/RC) Assessment have also helped to ensure individuals continue to receive needed services.

Regardless of the continuation of COVID-19, requirements to reassess DIDs for individuals receiving CFC and requiring a doctor's signature on ID/RC Assessments, unless the person experiences a substantial change in condition, should be eliminated.

We also recommend authorization to provide virtual Day Habilitation services. Currently, virtual Day Habilitation is not a billable service, but some providers are conducting the service in a virtual setting, without reimbursement, in order to reach individuals who would otherwise not receive services due to COVID-19 related restrictions. Authorizing use of virtual Day Habilitation services would give providers another tool to engage people in services and work toward each person's goals.